

1 Kodiak?

2 A That's what the Order says.

3 Q Did you cease operations on any of the seven

4 translators?

5 A No.

6 Q The next document I'd like you to look at is FCC01-242.

7 A I don't have that one either.

8 Q My copying fell off.

9 A 01-242?

10 Q Yes sir.

11 A Yes.

12 Q Are you familiar with this Order?

13 A Yes.

14 Q You received it shortly after its release?

15 A Sometime in September. Because I did a declaration

16 dated September 10th in response to this document.

17 Q I take it you understood that the Commission reiterated

18 its Order that Peninsula stop operating seven

19 translators serving Kenai, Soldotna, Anchor Point,

20 Homer, Kachemak City and Kodiak?

21 A Uh-huh (affirmative). Yes.

22 Q And did Peninsula cease operations on any of the seven

23 translators?

24 A No.

25 Q The next document I'd like you to look at is FCC02-32.

1 A Yes.

2 MR. SOUTHMAYD: I'm sorry, was that 02-32?

3 MR. SHOOK: Yes.

4 MR. SOUTHMAYD: Okay, thanks.

5 MR. SHOOK: I'm getting tired and starting to mumble.

6 MR. SOUTHMAYD: I understand.

7 MR. SHOOK RESUMES:

8 Q Mr. Becker, did you receive this document shortly after
9 its release?

10 A Yes.

11 Q Now did you cease operations on the translators that
12 we've been talking about, that is for Kenai, Soldotna,
13 Anchor Point, Kachemak City, Homer and Kodiak?

14 A We determined that the -- that the Commission didn't
15 have the authority to order us off pending our appeal
16 and so we continued our operation.

17 Q All right. I next ask you to look at a letter that is
18 dated May 25, 2002 and it's addressed to Richard L.
19 Pomeroy and it's from a person Kenneth P. Jacobus,
20 J.....

21 A Jacobus.

22 Q Jacobus, J-A-C-O-B-U-S.

23 a Yes.

24 Q Could you read the first two paragraphs aloud please?

25 A Dear Mr. Pomeroy, thank you for your recent letter

1 inquiring about the Penin -- about Peninsula
2 Communication's future intentions in this case.
3 Peninsula Communications cannot voluntarily cease
4 operation because that will destroy the business and
5 livelihoods of the owners and employees. I would hope
6 that all proceedings before the FCC and the Court of
7 Appeals for the District of Columbia are allowed to be
8 completed before Peninsula Communications is forced off
9 the air. We intend to file a Petition for Rehearing
10 before the Ninth Circuit. This is still timely because
11 in a civil case involving the United States either
12 party has 45 days to file such a Petition, Federal Rule
13 APP-40 -- or 40(a). Petition will be filed at the end
14 of May or the beginning of June.

15 Q Now who is Mr. Jacobus? Or Ja.....

16 A Mr. Jacobus is.....

17 Q Jacobus.

18 A Mr. Jacobus was my attorney for the proceeding before
19 the District Court in Anchorage.

20 Q And what is going on with that proceeding at this point
21 in time?

22 A We're waiting for a mandate to issue.

23 Q From whom? Or from what court?

24 A From the Ninth Circuit.

25 Q And that mandate concerns an injunction?

1 A Yes.

2 Q And what would the injunction require Peninsula to do?

3 A The injunction would require us to go off the air. Or
4 the -- seven of the nine translators would have to
5 cease operating.

6 Q Is Peninsula in a position now to state whether or not
7 it will comply with that injunction should it issue?

8 A The injunction should it issue, we would comply with
9 it. However we have filed for a motion for a stay with
10 the D.C. Circuit Court of Appeals and that is still
11 pending. Which would stay this whole proceeding.

12 Q And approximately when was that motion filed to your
13 knowledge?

14 A July 26th.

15 Q Now I take it you authorized Mr. Jacobus to send this
16 letter to Mr. Pomeroy?

17 A Let me look at it again. Yes.

18 Q Now is his statement concerning the destruction of the
19 business and livelihoods of the owners and employees
20 accurate?

21 A Yes, that's an accurate statement.

22 Q In other words if the seven translators were forced to
23 shut off, if you were -- if Peninsula was forced to
24 shut off the seven translators what you're saying is
25 that Peninsula's business would be so adversely

1 affected that it -- for all intensive purposes have to
2 shut down?

3 A No, I'm not saying that at all.

4 Q Okay. Then what are you.....

5 A I'm saying it would be adverse to our -- our business,
6 obviously.

7 Q Okay.

8 A It's adversely going to impact -- impact our business.

9 Q All right. So more properly it would hurt the business
10 but it wouldn't destroy the business.

11 A What's the difference?

12 Q Well, the difference is whether or not you're still
13 operating at all.

14 A We would attempt to keep our business afloat as best we
15 could, but it would certainly be a very severe adverse
16 impact on our business.

17 Q Now the final group of questions that I have, you'll be
18 happy to know this Jeff, concerns some material that we
19 received from Peninsula during discovery. And I would
20 direct your attention to the last three pages of what
21 is clipped together. And it appears to be a letter
22 that is directed to Dear Prospective and Valued
23 Clients.

24 A Uh-huh (affirmative).

25 Q Do you see that?

1 A Yes.

2 Q And what I have appears to be three pages in length.

3 A Yes.

4 MR. SOUTHMAYD: Excuse me. Was this part of the
5 supplemental document production?

6 MR. SHOOK: Yes, it was.

7 MR. SOUTHMAYD: Okay. And can you just identify? I'm
8 looking through that.

9 MR. SHOOK: Okay. I have five pages of -- excuse me,
10 six pages of material and the first three pages consist of
11 rate cards, rate card 24, rate card 23 and rate card 21(b).

12 MR. SOUTHMAYD: Okay.

13 MR. SHOOK: And then.....

14 MR. SOUTHMAYD: And then Dear Prospective and Valued
15 Client?

16 MR. SHOOK: Correct.

17 MR. SOUTHMAYD: Got you, okay.

18 MR. SHOOK: Okay.

19 MR. SOUTHMAYD: Thanks.

20 MR. SHOOK RESUMES:

21 Q Now would the -- the final three pages, the letter
22 being Dear Prospective and Valued Client, would it be a
23 fair characterization to say that this is a sale
24 solicitation?

25 A It is used in -- in marketing our stations.

1 Q Now looking at some numbers that appear to be typed on
2 in some fashion, if you'll go to the bottom right hand
3 portion you'll notice that the three pages of the
4 letter have typed pages, it looks like one, two and
5 then it goes to five. Do you see that?

6 A Yes.

7 Q Should there be pages three and four to this?

8 A I don't know. I'd have to find the original.

9 Q Do you know who wrote the letter?

10 A Terry Coval put this together.

11 Q Do you know when he did it?

12 A It looks fairly old. I -- I don't know.

13 Q Well, it references K Wave, KPEN, KGTL and K Bay. Now
14 if I -- if my memory serves K Bay came on the scene
15 only within the last three years?

16 A Yes. Could we back up?

17 Q Sure.

18 A My guess is that the -- there are rate cards that may
19 be missing and maybe a map. I think we had a map that
20 was maybe part of this and then probably the current
21 rate card. And it's -- since the rate cards change
22 that may be why it's not in here. But I believe we had
23 a map and then a rate card as well as the description
24 and that would have made the five -- five pages.

25 Q Ah, that would have been pages three and four?

1 A I think so. Yes.

2 Q All right. Were there any authors of this -- you know,
3 co-authors of this letter aside from Mr. Coval?

4 A Coval wrote it, I, you know, approved it. He wrote it
5 and I -- I approved it.

6 Q Would it be possible for Mr. Coval to bring with him
7 the current rate card information and whatever is
8 missing from this?

9 A The current rate card is this one right here, number
10 24.

11 Q Number 24 is the current rate card?

12 A Yes.

13 Q And.....

14 MR. SOUTHMAYD: If I could jump in, Dave, would you
15 check and see if there's anything missing here when he
16 comes?

17 THE WITNESS: On that?

18 MR. SOUTHMAYD: Yeah, and have him bring it.

19 THE WITNESS: Yeah, I'll.....

20 MR. SOUTHMAYD: Or just confirm that this is what the
21 package is.

22 THE WITNESS: Okay.

23 MR. SOUTHMAYD: Because I see what -- I -- you know, I
24 received it as a -- page one and two and five. This may be
25 all it is, but if there's a three and four.....

1 THE WITNESS: Yeah, we'll -- we'll.....

2 MR. SOUTHMAYD:Terry would need to bring it. If
3 there isn't perhaps he could be able to say that.

4 THE WITNESS: Okay.

5 MR. SOUTHMAYD: Whatever the case is.

6 THE WITNESS: I will check with him on that before
7 tomorrow.

8 MR. SOUTHMAYD: Okay, thanks. Sorry.

9 MR. SHOOK: All right, we're almost finished. I just
10 want to consult with my co-counsel and then we can wrap this
11 up.

12 THE WITNESS: Okay.

13 MR. SHOOK: So why don't we take a five minute break
14 here and people can get water.....

15 MR. SOUTHMAYD: Good.

16 THE WITNESS: Okay.

17 MR. SHOOK:coffee -- water, whatever.

18 MR. SOUTHMAYD: Okay.

19 THE REPORTER: Off record.

20 (Off record)

21 (On record)

22 THE REPORTER: On record.

23 MR. SHOOK RESUMES:

24 Q All right. I have a few follow up or clarifying
25 questions.....

1 A Okay.

2 Qand then we can be done with this and you can go
3 on your way.

4 A All right.

5 Q Now I know we had tried to pinpoint earlier what the
6 revenues were with respect to a particular translator
7 relative to its expenses. Wouldn't it be fair to say
8 though that if you understood that it cost more to
9 operate a particular translator than the revenue it was
10 bringing in it would be a prudent decision on your part
11 to shut the translator off and you would do so?

12 A No.

13 Q And why is that?

14 A Because, as I stated before, there's more to this than
15 just dollars. And in fact if you actually look at the
16 numbers in Seward we probably are subsidizing our
17 service to Seward it'd be my guess. It costs us
18 \$1,670.00 a month for our uplink to put the signal into
19 Seward, we have to pay the City rent and there's
20 probably a number of months where we get less revenue
21 out of Seward than what -- what it costs us to put the
22 signal there. But, we serve that community and that
23 sig -- that community is -- is a very big part of our
24 overall operation. So there's a community interest
25 part of this equation which I value as a broadcaster

1 that -- that we've had lots of feedback from Seward and
2 petitions, probably 1,500 signatures, a third of that
3 community signed petitions objecting to the loss of our
4 signals or our stations out of that community. And
5 that's an overwhelming showing for -- of public support
6 in that community for us. And the other guy that's in
7 town there, just go over there -- I -- I would
8 challenge you to go to Seward and hold a public hearing
9 and get the input from the community and -- and get
10 their take on us being in that community and whether or
11 not we should be there. I would challenge you to do
12 that.

13 Q Your point being that if there was a popularity contest
14 between you and the other fellow you'd win.

15 A Hands down.

16 Q The previous question focused more I guess on short
17 term profitability. But what if over a period of six
18 months, one year, two years you were consistently
19 losing money with respect to the operation of a
20 translator? Wouldn't you have to shut it down?

21 A No. That's only part of the equation. And I know
22 you're trying to ascribe some kind of motive here to me
23 for operating these things. My motive in staying on
24 the air is simply to get my appeal heard. And you can
25 look in my statement of my Motion to -- for Leave to

1 Offer Proof and that's why we are on the air.

2 Q And by your appeal heard you mean.....

3 A The D.C. Cir.....

4 Qin front of the D.C. Circuit.

5 A Absolutely, yes, that's where I want to go because I
6 believe that we'll prevail once we get a fair hearing
7 before the D.C. Circuit.

8 Q Now you have mentioned before that I think Mr. Coval
9 had the title of Sales Manager?

10 A Yes.

11 Q Did I hear that right?

12 A Uh-huh (affirmative).

13 Q And what is it that as a Sales Manager Mr. Coval is
14 supposed to do?

15 A He's supposed to sell the stations to the max. It's
16 his job to -- anybody that wants to buy time he will
17 sell time to. I'm a business and I will sell to
18 whoever can help me pay my bills.

19 Q Does Mr. Coval manage any individuals or it's simply,
20 you know, a title concerning.....

21 A No.

22 Qaccounts?

23 A He is a manager from the standpoint that Gary Hondel
24 reports to him who also is a salesman but he's not the
25 manager. And then also Tim White coordinates his sales

1 with Terry. So that Terry is the overall one, he
2 develops the rate card and then Gary Hondel and Tim
3 White both are responsible to -- to Terry Coval.

4 Q Now what, if anything, does your wife Eileen have to do
5 with the day to day operations of the station?

6 A Very little. Almost nothing

7 Q Anything in particular?

8 A Other than she listens to them and tells me when we're
9 doing something wrong.

10 Q Okay. Yeah, there are plenty of places I could go with
11 that, but.....

12 A Right.

13 Q Jeff, now.

14 MR. SOUTHMAYD: Yes, I'm married too.

15 MRS. BECKER: I just tell you you got to get your
16 glasses out.

17 Q In his position as Sales Manager does Mr. Coval -- is
18 Mr. Coval in a position to know how much sales revenue
19 is generated with respect to each of the markets that
20 Peninsula sells in?

21 A Well, he turns in time orders. I don't think he tracks
22 it per community. We -- in the documents that we
23 produced to you we gave you an income statement that --
24 that put Anchorage, Kenai, Soldotna and Kodiak and
25 Seward, I think it was broken out into geographical

1 areas. Did you see that?

2 Q Yes, I saw that.

3 A Oh, okay. Well, that is essentially the only
4 accounting that's done on a -- on a basis. And that
5 time order is entered based on where it came from. So
6 if you look at that you can see how the overall revenue
7 derives from certain geographical areas.

8 (Whispered conversation)

9 Q Does Peninsula refer to itself in its marketing as a
10 super station or a.....

11 A Uh-huh (affirmative). We have used that term, we don't
12 -- we're not currently using it. It came from WTBS
13 Atlanta and we thought it was a neat way to describe
14 the station as covering a big area. We cover 200
15 miles. So it seemed appropriate to use it as a
16 marketing slogan. We're not currently using it because
17 we change slogans from time to time.

18 Q And in terms of who initiated the use of the slogan,
19 was that your idea or did that.....

20 A Probably.

21 Q And in terms of stopping it, that was also your idea?

22 A Uh-huh (affirmative).

23 Q And that's a yes?

24 A Sure, yes.

25 Q I understand when you say uh-huh but.....

1 A Okay, yeah. I'll be.....

2 Qthe rest of the world may not be able.....

3 A Okay.

4 Qto figure it out.

5 A I'll try harder.

6 MR. SHOOK: All right Jeff, you can start singing
7 Alleluia because I just finished.

8 MR. SOUTHMAYD: No, you don't want to hear me sing.

9 MR. SHOOK: It's okay. Well now of course you do have
10 an opportunity to jump in here and ask some clarifying
11 questions if you want to.

12 MR. SOUTHMAYD: I -- you know, actually I think my
13 client is very well spoken in his ability to respond. Just
14 bear with me for a second.

15 (Pause)

16 **CROSS EXAMINATION**

17 BY MR. SOUTHMAYD:

18 Q To follow up just on background, Mr. Becker, how long
19 has Peninsula Communications been an FCC licensee?

20 A Since July of 1979. .

21 Q And has that been strictly in Alaska?

22 A Yes.

23 Q Okay. And did you have some broadcast background
24 previous to that yourself personally?

25 A Not in broadcast, I did in electronic engineering. I

1 had worked for Raytheon for six years in their
2 electromagnetic system division in Goleta, California.

3 Q So Peninsula can claim a licensee -- did you say 1979?

4 A Yes. There were no stations here. There was only one
5 station on the peninsula, KSRM AM was the only station
6 in southcentral Alaska.

7 Q Okay.

8 (Pause)

9 Q Did you say that K285AA in Kodiak, Alaska was the first
10 commercial radio station that was received there?

11 A That's correct.

12 Q Do you recall when that was?

13 A Do I recall what?

14 Q When that was.

15 A Well, we went on the air I believe it was in 1983 in
16 Kodiak. There was no other commercial FM service in
17 Kodiak. In fact both our translators were first and
18 second commercial service to Kodiak. That was followed
19 later by -- at the time it was KJJZ FM came on the air
20 later, one or two years later. To the best of my
21 recollection, I'm a little fuzzy on the dates but I'm
22 pretty sure that's right.

23 Q Okay. Is that true in the case of any of these other
24 translators?

25 A Yes, Seward. First time -- there was an allocation in

1 Seward for 103.1 which was vacant for a number of
2 years. They -- there were -- in fact a CP issued for
3 Seward, it was never built. I put on both our
4 translators in 1992 I think it was, somewhere around
5 there, and that was the first commercial FM service in
6 Seward to that community. And we -- we were in that
7 community for seven or -- seven years I believe it was,
8 from '99 when another station was built.

9 Q Now do -- you have two translators in Kachemak City,
10 Alaska?

11 A I have one. By the way, the three translators, Anchor
12 Point for KPEN, Homer and Kachemak City were never
13 contested in any of these proceedings by any of our
14 competitors.

15 Q With regard to other service, is there -- are you
16 familiar with the concept of the reserve non-commercial
17 band?

18 A Yes.

19 Q And what does that mean to you?

20 A It means all the channels below 92 megahertz. Eighty-
21 eight to 92.

22 Q All the channels below 92 megahertz what?

23 A Pardon?

24 Q Why were those different from the channels above 92
25 megahertz?

1 A They're set aside for non-commercial educational
2 purposes.

3 Q Okay. Is that true in Alaska?

4 A No. Well, it wasn't. In fact when I first started in
5 1979 there were no authorizations in Alaska below 100
6 megahertz.

7 Q What about now?

8 A Now the entire band's open as it is everywhere else.

9 Q So there are stations licensed below 92.1 strictly non-
10 commercially?

11 A Well, I don't -- I would assume that to be the case
12 because that's what the -- the band is set aside for
13 non-commercial applicants, yes.

14 Q I see.

15 MR. SOUTHMAYD: That's all I have.

16 THE REPORTER: Okay. Off record. Oh, before I go off
17 record I want to confirm that you've made arrangements with
18 Kron Associates for whatever transcriptions you want, is
19 that correct?

20 MR. SHOOK: There are transcriptions that are to be
21 filed pursuant to the Commission's rules.

22 THE REPORTER: Okay.

23 MR. SHOOK: We don't get separate.....

24 THE REPORTER: I see, okay.

25 MR. SHOOK:transcripts. So only if we wanted to

1 order for ourselves would we make separate arrangements.

2 THE REPORTER: Okay.

3 MR. SHOOK: Now that doesn't have anything to do with
4 whether Mr. Becker on behalf of Peninsula or Mr. Southmayd
5 or both of them want to have transcripts.....

6 THE REPORTER: No.

7 MR. SHOOK:made or sent to them. That's
8 something different.

9 THE REPORTER: Some -- Kron Associates will be
10 transcribing this for somebody.

11 MR. SHOOK: Right.

12 THE REPORTER: Okay. And you -- you've already
13 got.....

14 MR. SHOOK: It's for the Federal Communications
15 Commission and there is a contract that we have with.....

16 THE REPORTER: Kron Associates.

17 MR. SHOOK:Heritage who in turn has contracted
18 with.....

19 THE REPORTER: Kron.

20 MR. SHOOK:Kron.

21 THE REPORTER: Okay. That's fine.

22 MR. SHOOK: The contract aspects are things that I have
23 nothing to do with.....

24 THE REPORTER: Okay.

25 MR. SHOOK:and hope never to have anything do to

1 with.

2 THE REPORTER: Okay. And will a copy of -- well, in
3 this case then a copy won't be sent to you for signature?

4 THE WITNESS: I don't know. Jeff, do you want a copy?

5 MR. SOUTHMAYD: Well, I was going to ask that question
6 if I could. Are you go -- will you be sending a copy to Mr.
7 Becker for corrections with a correction sheet?

8 THE REPORTER: I am working for Kron Associates who is
9 doing this. And so that's why I want it on the record. If
10 you would like one sent to him then they can do that.

11 MR. SOUTHMAYD: I don't have my rules here. Isn't that
12 -- James, isn't that the way it's normally done?

13 MR. SHOOK: Well, I know the way it's normally done is
14 that the reporting service will send a copy to the deponent
15 for the deponent to review and correct.

16 THE REPORTER: Okay.

17 MR. SOUTHMAYD: Right.

18 MR. SHOOK: And then whether or not the deponent
19 ultimately wants a copy is a matter of, you know, contract
20 between the deponent and the reporting company.

21 THE REPORTER: No. That was -- what we were talking
22 about was for his signature. And maybe in the FCC stuff you
23 don't require a signature. With some of the other
24 depositions if you don't sign within 30 days you've waived
25 your right of appeal or -- to disagree with anything

1 that.....

2 UNIDENTIFIED FEMALE: No, (indiscernible - not at mic).

3 MR. SHOOK: No, as I said, the typical FCC practice is
4 that as soon as the document is transcribed it is sent
5 to.....

6 THE REPORTER: Okay.

7 MR. SHOOK:the deponent for the deponent.....

8 THE REPORTER: Okay.

9 MR. SHOOK:to review and correct. Whether or not
10 the deponent ultimately wants a copy.....

11 THE REPORTER: That's.....

12 MR. SHOOK:is something.....

13 THE REPORTER:different, yeah.

14 MR. SHOOK:separate.

15 THE REPORTER: Yeah.

16 MR. SOUTHMAYD: Right.

17 THE REPORTER: Okay.

18 MR. SOUTHMAYD: The reason it seems to be important
19 here is there are a lot of technical phrases.....

20 THE REPORTER: Right..

21 MR. SOUTHMAYD:that maybe don't transcribe that
22 clearly.

23 THE REPORTER: Uh-huh (affirmative).

24 MR. SOUTHMAYD: Like megahertz for example, which Dave
25 just used.

1 MR. SHOOK: Or millivolts per meter which came up a
2 number of times.

3 MR. SOUTHMAYD: Exactly, exactly.

4 THE REPORTER: All right. Okay.

5 MR. SOUTHMAYD: Okay?

6 THE REPORTER: Should I go off? Off record.

7 (Deposition adjourned at 1:20 p.m.)

8 //

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1 I have read the foregoing pages 32 through 177,
2 and they are a true and accurate record of my
3 testimony therein recorded, and any changes and/or
4 corrections appear on the attached errata sheet
5 signed by me.

6 _____
7 DAVID F. BECKER
8

9 Subscribed and sworn to before me
10 this ____ day of _____, 2002.

11 _____
12 Notary Public

13 My Commission expires: _____
14
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REPORTER'S CERTIFICATE

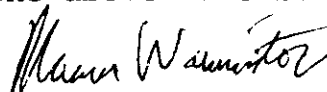
FCC DOCKET NO.: 02-21

CASE TITLE: Peninsula Communications, Inc.

HEARING DATE: August 14, 2002

LOCATION: Kenai, Alaska

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.

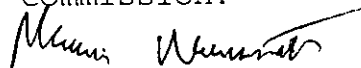


Date: 8/14/02

Merriam Warrington
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I hereby certify that the proceedings and evidence were fully and accurately transcribed from the tapes and notes provided by the above named reporter in the above case before the Federal Communications Commission.

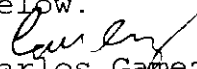


Date: 8/14/02

Merriam Warrington
Official Transcriber
Heritage Reporting Corporation

PROOFREADER'S CERTIFICATE

I hereby certify that the transcript of the proceedings and evidence in the above referenced case that was held before the Federal Communications Commission was proofread on the date specified below.



Date: 8/14/02

Carlos Gamez
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